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No.

In The

Supreme Court of the United States

October Term 1987

Andrew S. Cowin

v.

James A. Childers, Candance C. Warlow and Maryland Home Improvement Commission

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE MARYLAND COURT OF APPEALS

Andrew S. Cowin
4303 Ambler Drive
Kensington, Md 20895
(301) 564-0442

QUESTIONS PRESENTED

Did the Commission faithfully carry out their duties under the laws and cases of Maryland and the Constitutional rights? I have filed documents in the record to question this position in regards to Mrs. Warlow's case. By sending the letter dated October 19, 1987, did they send me false and misleading information which created an unfair and prejudicial hearing in her favor? When the Commission sent me the copy of the dismissal without any limitations I stopped my preparation in my defense since the letter relieved me of any responsibility or fault in my work. Further the only recourse Mrs. Warlow had according to the letter was to appeal to the court. Was this an act

that created a lopsided hearing?

In Mr. Childers Case, was there a joint effort among the following, Thomas D. Johnson, Director of Code Enforcement for the City of Gaithersburg, and the Commission to manipulate the city building codes, the acts of Mr. Childers, the responses of Mr. Johnson to help Mr. Childers and the state's acts to enforce their control over the business by making laws of the city and of the courts, subservient to the Commission's regulations? Did Mr. Johnson use heresay from Mr. Childers to decide on my request to come out to inspect the problem? Did Mr. Johnson and the Commission follow due process of the law? Did Johnson do his job as a building inspector? Did he openly refused to do.

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TABLE OF AUTHORITIES

Cases

Constitutional Provisions, Statutes Ordinances, Rules and Regulations

1975 BOCA CODES and The Code of the City of Gaithersburg, Maryland that apply in this case

OPINION BELOW

The opinion of the Maryland Court of Appeals is affirming the decision of the Maryland Court of Special Appeals and denying my petition as of January 2, 1987.

The opinion of Court of Special Appeals was affiming the Circuit Court judgement August 4, 1986.

The opinion of Montgomery Circuit Court was to affirm the ruling of the Maryland Home Improvement Commission ruling. reprinted in Appendix A.

JURISDICTION

The Appellate decision affirming the judgment of the Court of Special Appeals and denying the petition was dated January 2, 1987. Order was entered on that date. This Petition was filed incorrectly within ninety days of that Order in compliance with 28 U.S.C. Section 2101(c). The Court jurisdiction is invoked under 28 U.S.C. Section 1254(1), I was given 21 days to redo the petition. I am seeking review of the Constitutional issues set forth below?

Court of Appeals Docket No. 303 September Term 1986

Denied by the Md Court of Appeals on January 2, 1987 after being reheard on a technical issue.

STATEMENT OF THE CASE

This case is basically two cases I will therefore divide this brief into two separate parts. One part for Mr. James Childers and the other for Mrs. Candance Warlow.

In Mrs Warlow's case there is significant evidence that the Commission violated my rights under the Maryland State laws and created a prejudicial and unfair hearing.

In Mr. Childers case there was an open negelect for my rights to obtain on site information from Mr. Johnson in order to handle the problem that did

arise from the owner's negligence.

REASON FOR GRANTING WRIT

The State has given more power to the administrative agencies than the Constitution allows. The administrative body openly ignores the rights and procedures of due process to carve their cases to fit their procedures.

STATEMENT OF FACTS Warlow

In Mrs Warlow's case, Case No 84(90) 1962, (R, Docket Entry #74) received by the Clerk of the Circuit Court on October 14, 1985 includes 4 copies of correspondence in regards to Mrs. Warlow's Case. On October 10,

1984, John H. Lucas, Assistant Attorney General, Dept. of Licensing & Regulation, drew up a memo to Thomas R. Hannon, Executive Director, Maryland Home Improvement Commission, received by the Commission on October 11, 1984 discussing the case in detail. On October 19, 1984, Exhibit 1, Court transcript, the Commission sent Mrs Warlow a letter closing the the file and dismissing the complaint with a copy to myself. According to the case of the Maryland Commission on Human Relations v. Baltimore Gas and Electric Company, 296 Md. 46 (1983), when such a letter is sent to all parties signed by the Assistant Executive Director or the Executive Director, the case is closed and no further action can be taken by

the state agency. The aggrieved party may proceed with only a court action in fact that fact is also placed in the October 19, 1984 letter to Mrs. Warlow. Also, 10-215 (Apx1 p. 301)Judicial Review

The case remained closed. I had a hearing, with Mr. Action on Mr. Childers claims on February 22, 1;85 Mrs. Warlow wasn't allowed to take part in this hearing in regards to my license. On March 18, 1985, Mrs Warlow sent a letter to Mr. Hannon undated, with a copy to Mr Acton who wasn't involved with this case in detail prior to this letter, Ex parte communications (Apx 1,p, 100, 10-213) although he was sent copies of the memo from Mr, Lucas dated October 10, 1984 but wasn't

authorized to participate in the decision making process. This is evident by his memo to Mr. Hannon dated March 15, 1985, in his last paragraph where he mentions the Commission and reconsidering her case.

I was not informed of any of this happenings, I was hit with the new situation when I came into the hearing. The Commission separated the prior letters and said that the case was never officially closed under their regulations. This is quite obviously false by the attachments in entry 54. The Commission closed the case on October 1984 and reopened it in March when the memo came from Mr. Action. October to March is about 5 months give op take a few days. This is long enough

to close any case officially. If the letters were not sent, the case would have remained closed. Her next step was to go to court as written in the October 19, 1984 memo, not appeal to Mr. Hannon This is her first recorded illegal act. The copy to Mr. Acton is her second illegal act, the memo from Acton to Hannon was the first illegal act of the state. The reopening of the case was the second illegal act, the commission not sending me all correspondence was the third illegal act, the commission covering up this move by their regulations and saying the case was never fully closed was the fourth illegal act by the state. I admit, she got her way, but I now am questioning her methods.

STATEMENT OF FACTS CHILDERS

The situation is the the owner carried out some questionable acts. He said that he wanted to get the permit and call for the inspections himself then he did neither. He filled out an application dated the day he filed it with the city, Docket entry 15 February 22, 1984 hearing p. 54. The application was just filed. No fee paid so according to the city codes and BOCA, the permit couldn't be issued. Further, unless there consideration given, there is no active contract. We were approached about a week before he filed it. We were given the impression that the city was coming out while we were

trying to handle the load situation with the drains not draining right. On November 26, 1983, seeing no inspections I ordered the work stopped. On December 8, we called the city looking for a permit, inspection and help in this mess.

Mr. Johnson just made a call the day we requested help. Mr. Johnson took Mr. Childers's words over ours (heresay). We went looking to handle this mess properly with the procedures of due process. We reported a load problem with the drains. (Apx 3)According to Article II, Dangerous buildings Sec, 5-4 (c) r. 51 and Sec 5-7 p. 5, we were expecting an inspection and not be told the owner had to request it. p. 135 R

15) docket entry 15 of the 2/20/85 hearing. Now read the section where Mr. Johnson states that he made a decision. Now, look at the April 18, 1985 transcript. p. 19. Mr. Johnson admits he doesn't know what was going on. I question how he made his decision?

The Commission also rolled over the statement he let permit slide for 10 days prior to filing. Further, in their final order they stated a false date and statements, The date of application according to the order was November 26th the day I shut down. They also state that Mr. Johnson quoted that there wasn't a need for a permit. This is also false. Through out the hearing the Commission maintained that they were not

subject to the BOCA rules and regulations (R 15) this I what objecting to. The Commission and the state contends that the contractor has a non-delegatable duty to obtain all permits (P 15). This is fine if the owner doesn't insist on doing it himself. The city codes (Apx 1, p. 49)Article I, Sec. 5-1 incorporates the 1975 BOCA Codes as the Building Code of the City. Further, (Apx 2, p. 9 Sec 113,3) of the"BOCA codes states that the owner shall make the application or give his agent a duly verified affidavit to allow an agent to obtain a permit. As discussed above the owner choose to get the permit, inspections and get the city down to help us with the redesign of the roof, (Entry 1 the letters from BOCA).

the main problem was the fact the Mr. Johnson refused to inspect the job to determine what to do. We were under the impression that the city was going to come out while we were closing up. If Mr. Johnson had made his own inspection and determined the question of the permit issue himself, we could have proceeded or the owner would be notified that his description was inaccurate the job would be stopped, the applicant would be held responsible for the entire job since he proceeded with a false description, we wouldn't be charged with anything, he would be held liable for our costs and we could go on our way. The owner made false statements to keep us working until I had enough and shut down until I saw an inspector as the

codes state to do but none ever showed regardless of what we tried. The owner fired us when we protested the situation and we proceeded to this point.

ARGUMENTS

In the Childers's case, there is another case regarding government officials and their obligation to perform their duties in accordance with their laws, Citation no. 83 S.CT 1433, Louis McNeesse Jr t. Board of Education Ill. et al. In my case, the inspector's duty was to come to the site of the report and make a determination as to the situation that is occurring. A phone call is not considered equal to a personal visit. There for he displayed an unfair and illegal treatment toward

one party vs the other thus voiding the actual law. This is similar to the actions taken by the Board of Education when they ignored the discrimination reports of the parents. The inspector ignored my reports of a significant structural problem took the word of the owner as to the situation being only a minor repair or replacement job instead of giving me due process and going out to the job site to perform an inspection as his law requires him to perform. From that point, I was left without any protection under the law.

In the Warlow case, the Commission sent me information which was misleading and false, The information, the letter to Mrs. Warlow, informed me that the Commission intended not to proceed with

her case any further. It didn't mention any limitation or any rights of Mrs. Warlow to present any further issues in front of the Commission what so ever. This information influenced me in preparing for the hearing. The action by the Commission on October 19th created prejudice in behalf of Mrs. Warlow by creating the assumption in writing that her only alternative was to go to court. Therefore I stopped preparing my case since the Commission had ruled in my favor. I could not find a case similar case to quote. I doubt that this situation occurred before, i.e. a controlling body sent false and misleading information to the parties involved in a case under their judicature. Thus distroying the Constitutional right to a fair hearing.

-A1

Ruling of lower courts

Circuit Court

November 13, 1985

OPINION AND ORDER

This is an administrative appeal by Andrew S. Cowin t/a K.D. Development Company (Appellant), from a May 17, 1985 Improvement Commission (Commission) awarding James Childers and Candace Warlow (Appellees) $1,234.00 and $3,766.00 respectively, on their claims against Appellant's surety bond. The Commission'decision is affirmed.

Appellant urges five grounds for reversal of the May 17th decision: (1)

that the Commission staff improperly refused Appellant's request for evidence of communications allegedly made to the Commission by unnamed "politicians" on behalf of Appellee Warlow; (2) that the Commission improperly excluded documentary evidence proffered by the Appellant to the April 18, 1985 hearing; (3) that the Commission through its Chairman, Milton Bates, improperly "cut off" Appellant in his attempts to testify on his own behalf at the April 18, 1985 hearing; (4) that the transcript of February 22, proceeding which was accepted into evidence at the April 18, 1985 hearing was material and predjudicially "altered"; and (5) that the Commission lacked authority the April 18, 1985 hearing with respect to

Appellee Warlow's claim, since her original complaint against Appellant had been dismissed by the Commission.

Judicial Review of the Commission's decisions is governed by Section 10-215 of the Administrative Procedure Act (A.P.A.) Md State Gov't Code Ann s10-215(g)(1984). An agency's factual findings must be affirmed if supported by "substantial evidence;" the agency and an agency's decision is presumptively valid and must be reviewed in the light most favorable to the agency. Courtney v. Board of Trustees. 285 Md 356, 362 (1979)

Appellant's arguments herein do not establish a basis for reversing the Commission's decision. Appellant first argument is unsupported by record or

evidence that the Appellant has proffered to this Court. Appellant has been unable to produce any evidence that unnamed "politicians" improperly" interceed with the Commission on behalf of Appellee Warlow, or that Appellant himself ever formally requested access to the Commission records of any ex parte communication. Assuming, arguendo, these communications were made, Appellant has failed to demostrate that any prejudice resulted from communications by any politicians.

Appellant's second argrument is also without merit. The Commission refused to admit one of Appellant's proffered exhibits into evidence. This exhibit was a copy of an October 19 1984 letter from the Commission to Appellee Warlow,

notifiying her of the Commission's dismissal of her complaint seeking revocation of the Appellant's contractor's license. Appellee Warlow's 1984 complaint was procedurally and subtantively distinct from her claim against Appellant's bond. For this reason, the Commission's refusal to admit the October 1984 letter into evidence at the April 18, 1985 hearing was well within the Commission preogative to exclude immaterial and irrelevant evidence under A.P.A s10-208(c). That the Commission decision did not violate fundamental fairness is made manifest by the fact that the Commission had refused Appellee Warlow's prooffered of the same letter latter proffered by the Appellant.

Apellant's third assignment of error is similarly mertless since it, too, goes to the Commission's authority to exclude evidence under A.P.A s10-208(c). A review of the transcript of April 18th hearing reveals only one instance where the Commission stopped both the Appeallant and his assistant, Mr. Penland, from testifying, and this was only after the appellant had presented extensive testomony on the same issue. The Commission was clearly within its prerogative under A.P.A 10-208(c)(4) when it refused to hear Apellant's further testmony, because it was cumulative and "unduly repetitious."

Appellant's fourth ground for reversal alleges "alterations" or inconsistencies in the February 22, 1985

transcript which admitted into evidence without objection at April 18th hearing. The subject of the February transcript was identical to that of the April hearing, i.e. whether Appellant's work on Apellee Childer's roof was "unworkmanlike" or defective. Appellent established to errors in February transcript: on page 87, line 15 expert witness George Aubin referred to a "December 12th inspection which, in fact, occured on November 12th; and on page 134, lines 3 though 8, Apellant's statement in reference to the need for a permit for Childers' roof, "Our hands were tied," was inaccurately attributed to Thomas Johnson, Director of Code Enforcement for Gaithersburg. These inconsistencies were nor prejudicial,

nor even material to the Commission's decision. As previously indicated, the Commission heard substantial testimony, it is clear from the remainder of the February transcript and from the record as a whole the inspection occured on November 12, 1983, and that this was understood by the Commission.

Appellant's final argument is that the Commission was without authority to conduct the April 18th hearing with regard to Appelle Warlow's claim, since it has previously dismissed a complaint by Warlow which was based on the same facts and transactions involved at the April hearing. Appellant's argument, to the extent that it is based on collateral estopel or resjudicata principles, misses the point of the

April hearing, which was to determine the Appellees' entitlement, if any, to Appellant's surety bond, pursuant to the Commmission's authority under Md. Ann. Code, Art 56, s 257(c) and Md Admin. Code tit. 09, S08.03 (1984) (recodified as tit. 09, s08.04.03 on August 26, 1985). As the Commission has argued, Warlow's original complaint was brought pursuant to Code Art s256, which empowers the Commission to revoke the license of a home improvement contractor who has been found to lack competence to engage in home improvement contracting. The Commission's October 1984 decision that Warlow's complaint did not state sufficient grounds to proceed under Section 258 did not bar the Commission from considering Warlow's separate but

factually identical claim against Appellant's surety bond since it was not a "final adjudication" on the issue of Appellent's competence as a contractor. See generally 2 Am. Jur.2d, Administrative Law s 500-503 (1962).

For the aforegoing reasons, it is, this 13 day of November 1985, in the Circuit Court for Montgomery County, Maryland.

ORDERED, that the decision of the Maryland Home Improvement Commission in Docket No. 84-B-014 is affirmed.

IRMA S. RAKER

Judge of the Circuit Court for

Montgomery County, Maryland

I Andrew S. Cowin do hereby state that I sent three copies to the attorney of record for the subject case in the State Attorney's Office in Baltimore, Maryland

Vincent Demarco, Attorney
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Andrew S. Cowin

April 21, 1987